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SUMMARY RECORD OF THE 57th MEETING

Chairman: Mr. VILCHEZ ASHER (Nicaragua)

Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. MSELLE

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The meeting was called to order at 3.10 p.m.

AGENDA ITEM 136: FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE FORMER YUGOSLAVIA SINCE 1991 (continued) (A/50/925; A/C.5/50/41)

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1. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions) introduced the Advisory Committee's reports on the two international tribunals, for the former Yugoslavia and Rwanda, respectively (A/50/925 and A/50/923). The Advisory Committee had conducted extensive hearings of the estimates submitted for the Tribunals in the presence of the Prosecutor and the two Registrars. Although the Advisory Committee had commented that there should be uniformity in the presentation of the estimates, it had to be borne in mind that the two Tribunals were quite separate while sharing one Prosecutor and one Appeals Chamber.

2. Expenditure for 1994-1995 had shown unencumbered balances of $2.3 million for the Tribunal for the former Yugoslavia and $11.3 million for the Rwanda Tribunal. Those balances would be available to reduce assessments for 1996. The Yugoslavia Tribunal had 6 trials in prospect for 1996; the Rwanda Tribunal 12. For the Yugoslavia Tribunal, the proposed 1996 estimate amounted to $40.8 million with 342 posts, excluding 11 judges; for the Rwanda Tribunal the Secretary-General had estimated $38.8 million net with 404 posts, excluding six judges.

3. In view of the developments which had taken place in the former Yugoslavia following the Dayton Peace Agreement and the Rome "rules of the road" referred to in paragraph 13 of document A/50/925, everything should be done to ensure that priority was given to the office of the Prosecutor, as the work of the office was the engine which would drive the future work of the Tribunal. The same priority should be accorded to the work of the Prosecutor for the Rwanda Tribunal. The Advisory Committee had been informed by the Prosecutor for Rwanda that if staff resources were made available, the investigative function could be completed in approximately 18 months and the office in Kigali could be closed soon thereafter. In that connection the Advisory Committee had been surprised to learn that some of the procedures followed by Headquarters regarding personnel recruitment and delegation of authority to the Rwanda Tribunal had not been conducive to the efficient discharge of the Tribunal's mandate. The lack of delegation of authority to appoint international staff had contributed to a delay in the recruitment for approved posts. In addition, he had to report that the cost-cutting measures being pursued under the regular budget had adversely affected recruitment for the Yugoslavia Tribunal. In paragraph 13 of its

report, the Committee called for recruitment of qualified personnel without further delay.

4. The reports of the Advisory Committee had made extensive comments on the policies and procedures being followed by the two Tribunals regarding extrabudgetary resources whether in cash or in kind, including personnel. The Committee was still not satisfied that full disclosure had been made of the level of extrabudgetary resources received and how they were being used. The method of budgeting for activities which were ultimately carried out by extrabudgetary personnel or by means of extrabudgetary funds was also of concern to the Committee. A number of recommendations had been made in its previous report regarding the financing of the Yugoslavia Tribunal, and those recommendations had been repeated in the current report. The same comments applied equally to the Rwanda Tribunal. In particular, it had been disclosed to the Committee that donors were charged 13 per cent support cost. That was a policy issue which needed to be addressed by the General Assembly, especially with regard to personnel provided free of charge to the United Nations to occupy posts which would otherwise have been funded from assessed contributions. The Committee had also recommended that full budgeting should be the norm rather than the exception. By that procedure the Secretary-General could estimate the full cost of an activity and indicate that portion to be funded from extrabudgetary sources leaving the balance to be assessed.

5. The reports of the Advisory Committee had provided extensive comments on the estimated cost for defence counsel, the protection of victims and witnesses and the differences in expenditure for the two Tribunals. Whenever reference had been made to the use of extrabudgetary sources, the Committee had indicated that it had been unable to ascertain the status of voluntary funds for that activity. The Committee had also recommended that stringent procedures should be put in place to determine the bona fide indigence of accused persons, and that guidelines should be issued on recovering payments made by the United Nations to any accused persons who were found to have committed perjury.

6. With respect to administration and other support costs, the Advisory Committee had stated that cumbersome and costly bureaucracies should be avoided, and wherever possible administrative structures should be streamlined. The Committee was particularly concerned that the Yugoslavia Tribunal might be paying for more space than it actually required. More extensive efforts should also be undertaken to acquire assets from existing United Nations stock for items such as computers, vehicles, furniture and communications equipment.

7. Paragraph 16 of document A/50/925 indicated that in some instances Governments were paying the travel expenses of certain Tribunal judges. The General Assembly would need to provide further guidance on that matter. The related regulations covering travel and subsistence had still not been submitted for scrutiny by the Advisory Committee, as had been previously requested. The conditions of service and allowances for judges of both Tribunals should be the same, and the General Assembly would need to take further action in that matter.

8. Mr. UBALIJORO (Rwanda) said that his Government welcomed the constructive and objective report of the Advisory Committee on the financing of the Rwanda Tribunal. He commended the approach taken by the Committee in analysing the

differences between the presentation of the budgets of the Rwanda and Yugoslavia Tribunals.

9. Regarding paragraph 7 of the Advisory Committee's report, his delegation was greatly concerned about the lack of delegated authority to appoint international staff, and it had been painful to learn that the problem had contributed to further delay in the recruitment of suitable staff. He appealed to Member States not to allow any further technical aspects to jeopardize the prompt and effective functioning of the Tribunal. In that respect his delegation endorsed the Committee's recommendation that the Tribunal should be granted the power to delegate authority in personnel matters. Such a step would enable the investigative function to be completed rapidly, thus lessening existing tensions and distrust between the survivors of the genocide and those who had perpetrated it.

10. His Government failed to understand why the Secretary-General's report envisaged the holding of only 12 trials in 1996. The small number of prosecutions could easily send out the wrong message; he suggested that a lack of political will meant that the magnitude of the crimes was being overlooked.

11. Regarding paragraph 9 of the report, his Government wished to request that the conditions of service and allowances for the judges of the Yugoslavia Tribunal should be extended to the judges of the Rwanda Tribunal. It was obvious that such fundamental resources should be made available to both Tribunals if they were to acquire a minimum of efficiency.

12. Regarding paragraph 14, the fact that there was only one Prosecutor for both Tribunals should not result in the establishment of a separate unit at the Hague for servicing the Rwanda Tribunal, nor should a Prosecutor based in Rwanda service the Yugoslavia Tribunal. His delegation therefore endorsed the Committee's observation that the Prosecutor should receive service wherever he happened to be. It was concerned about the workload that devolved on a single Prosecutor who had to deal with two different realities and therefore was required to adopt two different approaches.

13. Regarding paragraph 21 of the report, his delegation wished to request that interpretation machinery should be put in place to allow interpreters to service the meetings of the Rwanda Tribunal on a permanent basis and thus avoid additional delays. With respect to paragraph 22, Rwanda strongly supported the adoption of procedures to recover resources from accused persons who had been provided with defence counsel but had subsequently been found not to qualify for such support. In that connection he wished to inform the Fifth Committee that most of the key architects of genocide in Rwanda possessed substantial financial resources, since in the wake of the genocide they had looted Rwanda's economy. Many of those assets were currently in foreign bank accounts.

14. Regarding paragraph 27 of the report, his delegation failed to understand why a double standard had been applied with regard to the victim/witness insurance programme. It was unjust and insensitive not to establish a comparable provision for the Rwanda Tribunal, especially since it had to be borne in mind that the success of the trials would rely on the cooperation of victims and witnesses.

AGENDA ITEM 116: PROGRAMME BUDGET FOR THE BIENNIUM 1996-1997 (continued)

Revised estimates under section 26E, Conference services, and section 26F, Administration, Geneva (A/50/7/Add.15; A/C.5/50/58)

Conference servicing of the Conference of States Parties to the United Nations Framework Convention on Climate Change

15. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Advisory Committee had previously submitted an interim recommendation on the matter pending consideration of a detailed presentation from the Secretariat of the administrative and budgetary implications of the decision by the General Assembly to include in the calendar of conferences the cost of meetings of the Conference of the Parties to the United Nations Framework Convention on Climate Change. Pursuant to the request of the Advisory Committee, the Secretary-General had submitted revised estimates amounting to $7.5 million for the biennium 1996-1997 with an additional appropriation of $5.5 million.

16. The Advisory Committee had noted the proposed large amount of documentation and the related cost. In line with measures being taken throughout the United Nations, the Conference of the States Parties should be requested to review the number of documents envisaged and the manner in which they would be produced. The Committee had also requested in paragraph 11 of its report that every effort should be made to recruit staff locally in Bonn for the 1997 meetings with a view to reducing costs.

17. The Committee had indicated that the additional appropriation for that activity would be governed by the procedure for the use of the contingency fund and that additional assessment would be considered by the General Assembly in the context of the revised appropriations to be adopted by the General Assembly in December 1996.

18. Ms. SHENWICK (United States of America) said that the contingency fund should not be used for the purpose outlined in the Advisory Committee's report. Appropriations should be held at the budget level which had been agreed. The existence of the contingency fund did not relieve the Secretary-General of his duty to carry out a meaningful review of resources to determine whether or not the proposed activity should be accommodated within the existing overall appropriation.

19. Mr. GOKHALE (India) said that General Assembly resolution 50/115 clearly stressed the importance of the proposed meetings which were essential if the work of the Conference was to be properly conducted. While welcoming all measures to achieve savings, activities under the Framework Convention on Climate Change were of paramount importance and should therefore be fully funded. His delegation accepted the Advisory Committee's recommendations, provided that the allocation of resources from the contingency fund would guarantee full servicing of the proposed meetings.

20. Mr. RAMLAL (Trinidad and Tobago) asked whether or not General Assembly resolution 50/115 had been adopted by consensus. He pointed out that small

island States were the most vulnerable to climate change, and his delegation therefore endorsed the Advisory Committee's recommendations, provided that assurances could be given that the contingency fund would cover all conference servicing requirements.

21. Mr. ATIYANTO (Indonesia), supported by Ms. RODRÍGUEZ ABASCAL (Cuba), Mr. MANCINI (Italy) and Mrs. INCERA (Costa Rica), endorsed full financing of the proposed meetings from the contingency fund.

22. Mr. TAKASU (Controller) confirmed that General Assembly resolution 50/115 had been adopted by consensus and that Member States had agreed to the provision of 12 weeks of conference services. Regarding meetings that had already been held, paragraph 4 of the Secretary-General's revised estimate made it clear that work to prepare for meetings during the first quarter of 1996 could be initiated on the understanding that such action should in no way prejudge decisions to be taken by the General Assembly.

23. The contingency fund had been created by General Assembly resolution 41/213 to accommodate additional expenditures arising from legislative mandates adopted after the initial programme budget and not included therein. The contingency fund for 1996-1997 had been set at three quarters of a per cent of the total budget. Those resources, which totalled $19,427,000, were still available. The additional projected conference-servicing requirements for the Conference of the States Parties amounted to $5.5 million, which was well within the current capacity of the contingency fund.

24. Mr. GOKHALE (India) requested clarification that application of the procedures for the operation and use of the contingency fund meant that the Secretariat would make arrangements as requested and that the required meetings would be fully funded.

25. Mr. TAKASU (Controller) said that in the absence of any change by the General Assembly of the provisions of its resolution 41/213 on the contingency fund there would be no impediment to provision by the Secretariat of the required services.

26. Mr. GOKHALE (India) said that it was thus his delegation's understanding that the Secretariat would provide funding for the meetings in accordance with that resolution.

27. Ms. SHENWICK (United States of America) said that the use of the contingency fund on any occasion for any purpose suggested by the Secretariat was in fact for the membership to determine, and a decision not to make use of the contingency fund did not represent a repudiation of the budgetary process established in resolution 41/213. The viability of the budgetary process was not at stake; the Committee was simply considering whether to use the contingency fund for the purpose proposed in the amount of $5 million, to which her delegation was opposed.

28. Mr. TAKASU (Controller) said that the contingency fund had been created by the General Assembly as part of the budgetary procedure to regulate additional funding necessitated by the adoption of legislative mandates after the budget

had been approved. The General Assembly had further provided in its resolution 41/213 that revised estimates arising from the impact of extraordinary expenses, including those relating to the maintenance of peace and security, as well as fluctuations in rates of exchange and inflation, should not be covered by the fund. The contingency fund currently stood at some $19 million, so that the $5.5 million required was available, subject to a decision to appropriate that amount.

29. Mr. GOKHALE (India) said that his delegation attached great importance to the Framework Convention on Climate Change and to the related meetings. He noted that funds were available in the contingency fund, and further noted that resolution 41/213 also provided that low priority items should be deferred to a later biennium. Accordingly, he wished to ask the United States delegation whether its view was that the Convention on Climate Change was such a low priority that it should be deferred to the next biennium, that being the only alternative to financing under the contingency fund. His delegation would be opposed to any such view.

30. Ms. SHENWICK (United States of America) said that her delegation would welcome clarification of its understanding that any decision to make use of the contingency fund was for the membership to take rather than the Secretariat, and of its view that a decision not to use the contingency fund did not constitute repudiation of the budgetary process as established in resolution 41/213. With respect to the question raised by the delegation of India, her delegation considered the conference to be of such substantive importance that it should be funded as a priority activity within the approved budget level of $2.608 billion ahead of other activities of lower priority.

31. Mr. TAKASU (Controller) said that the Secretary-General provided statements of programme budget implications or revised estimates when it was his view that an activity fell outside the contingency fund. Otherwise activities were to be covered under the fund. He noted that in December 1995 the Fifth Committee had decided that the conference-servicing costs of the Conference should be met from the regular budget and that the actual amounts needed would be considered on the basis of revised estimates to be submitted at the resumed session. That decision had been made subject to the guidelines for the operation and use of the contingency fund.

32. The CHAIRMAN said that the matter would be referred to informal consultations.

Programme budget implications of draft resolution A/50/L.72 concerning agenda item 45 (continued) (A/C.5/50/59)

33. Ms. PEÑA (Mexico) said that her delegation would prefer any decision adopted by the Committee to authorize expenditure to 31 December 1996 so as to ensure full funding for the United Nations Office of Verification in El Salvador.

34. Mr. MENKVELD (Netherlands) said that the Committee should follow the procedure it had used in the case of the International Civilian Mission in Haiti (MICIVIH), whereby the Committee had adopted a draft decision providing for

commitment authority pending a decision in respect of financing to be taken on the basis of a subsequent report of the Secretary-General. The Committee should authorize commitment authority to the end of May only.

35. Ms. PEÑA (Mexico) said that her delegation was not requesting any change in the procedures applying to civilian missions, but merely an extension of the Secretary-General's commitment authority. She would be willing to discuss the source of funding. That approach did not differ from the procedure applied to MICIVIH.

36. Ms. SHENWICK (United States of America) asked whether the Mexican proposal would mean that the procedure to be followed was the same as that applied to the Mission for the Verification of Human Rights in Guatemala (MINUGUA).

37. Mr. TAKASU (Controller) said that in the case of the two missions referred to the Secretary-General had been given commitment authority pending issuance of a report on possible absorption of costs. In the case of MINUGUA commitment authority had been given to the end of 1996, but in the case of MICIVIH only to the end of May.

38. The CHAIRMAN said that he would take it that the Fifth Committee wished to decide to inform the General Assembly that, should it adopt draft resolution A/50/L.72, the Secretary-General would be authorized to enter into commitments not to exceed $1,130,500 under section 3 of the programme budget for the biennium 1996-1997 and that such eventual additional appropriations as might be required would be considered by the General Assembly in the context of the first performance report for the biennium 1996-1997. In addition, an amount of $135,900 would be required under section 32 (Staff assessment), to be offset by income in the same amount under income section 1.

39. Mr. MENKVELD (Netherlands) said that the proposed decision reflected correct budgetary procedure, but not that followed in the case of MICIVIH for reasons which applied to the request now before the Committee. Specifically, no funds were provided in the budget, the Working Capital Fund was exhausted, and regular-budget funds would be depleted in July/August, so that there would be cross-borrowing from peace-keeping budgets for regular budget activities, to which his delegation was opposed. In order to see whether absorption was possible in the case of MICIVIH and MINUGUA the Secretary-General had been requested to formulate proposals by the end of May. All similar operations should be treated in the same way. The Committee, in the case of all three missions, would ultimately need to determine whether costs could be absorbed, whether cross-borrowing was required, or whether there was a need for additional funding. Accordingly, the Committee should adopt a decision whereby the Secretary-General would be authorized to enter into commitments to 31 May 1996, leaving the question of appropriations to be considered at a later stage at the resumed session.

40. The CHAIRMAN suggested, as an alternative scenario, that the Fifth Committee, having considered draft resolution A/50/L.72, the statement on the programme budget implications submitted by the Secretary-General (A/C.5/50/59), and the recommendations of the Advisory Committee on Administrative and Budgetary Questions (reflected in A/C.5/50/SR.56), recalling that the General

Assembly in its resolution 50/214 of 23 December 1995 had already requested the Secretary-General to achieve savings in an amount of $103,991,200 and had also requested the Secretary-General to fully implement all mandated programmes and activities, and reaffirming the budgetary process adopted in its resolution 41/213, of 19 December 1986, and subsequent relevant resolutions, should decide to inform the General Assembly that, should it adopt draft resolution A/50/L.72, the Secretary-General would be authorized to enter into commitments in an amount not exceeding $1,130,500 (net of staff assessment) under section 3 of the programme budget for the biennium 1996-1997 for the continuation of a United Nations presence in El Salvador during the period from 1 May to 31 December 1996. The Secretary-General would be requested to present to the General Assembly, through the Advisory Committee, no later than 15 May 1996, proposals on possible means of absorption in the 1996-1997 programme budget. The Committee would decide to revert to the issue of appropriations, at the latter part of its May 1996 session, in the light of the Secretary-General's proposals requested in the draft decision.

41. The draft decision he was proposing paralleled that taken in respect of MINUGUA.

42. Ms. SHENWICK (United States of America) said that the Chairman's formulation provided a basis for consensus. The Advisory Committee had, however, made recommendations which, if implemented, would reduce the amount below $1.1 million, a situation which her delegation would prefer. She asked to what amount expenditure could be reduced.

43. Mr. MSELLE (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Committee might authorize the Secretary-General to incur up to $1.1 million, taking into account the observations of the Advisory Committee.

44. The CHAIRMAN said that he would take it that the Committee wished to adopt the oral draft decision, as amended.

45. It was so decided.

46. Mr. MELENDEZ-BARAHONA (El Salvador) welcomed the adoption of the draft decision, as amended.

The meeting rose at 4.30 p.m.